

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

BATTLE CREEK REALTY, LLC,

Plaintiff,

v.

ENBRIDGE ENERGY, L.P.,
ENBRIDGE PIPELINES (LAKEHEAD), L.L.C.,
and ENBRIDGE PIPELINES (WISCONSIN), INC.,
jointly and severally,

Defendants.

_____ /

COMPLAINT AND JURY DEMAND

Plaintiff Battle Creek Realty, LLC (“Battle Creek Realty”), through counsel, states as follows for its Complaint against Defendants Enbridge Energy, L.P., Enbridge Pipelines (Lakehead), L.L.C., and Enbridge Pipelines (Wisconsin), Inc. (collectively, “Defendants”):

1. Battle Creek Realty is a Michigan limited liability company with its principal place of business located in Clinton Township, Michigan.

2. Defendant Enbridge Energy, L.P., is a Delaware limited partnership with its principal place of business located in Houston, Texas.

3. Defendant Enbridge Pipelines (Lakehead), L.L.C. is a Delaware limited liability company with its principal place of business located in Houston, Texas.

4. Defendant Enbridge Pipelines (Wisconsin), Inc. is a Wisconsin corporation with its principal place of business located in Houston, Texas.

5. Pursuant to 28 U.S.C. § 1332(a), this Court has jurisdiction over this matter because the amount in controversy exceeds \$75,000, and because this lawsuit is between citizens of different States.

6. Venue is proper under 28 U.S.C. § 1391(b)(2) because the events giving rise to the claims asserted occurred within this district, and the property that is subject of this action is situated entirely within this district.

General Allegations

7. Battle Creek Realty owns and operates Baker Estates, a manufactured home community in Emmett Township, Michigan.

8. Baker Estates is situated directly on the Kalamazoo River.

9. Baker Estates is roughly 18 acres.

10. On July 25, 2010, a 30-inch pipeline owned and maintained by Defendants began to leak oil into Talmadge Creek, which flows directly into the Kalamazoo River in Southwestern Michigan.

11. Defendants' oil spill caused more than 800,000 gallons of oil to flow into the Kalamazoo River.

12. Upon information and belief, Battle Creek Realty was one of the largest property owners damaged by Defendants' oil spill.

13. Upon information and belief, the Department of Transportation repeatedly warned Defendants to address the safety and performance of its pipeline.

14. Defendants' oil spill significantly impacted Battle Creek Realty's Baker Estates.

15. Prior to Defendants' oil spill, Baker Estates had approximately 120 sites for manufactured homes.

16. Due to the oil spill, many of the sites for manufactured homes had to be abandoned and residents relocated.

17. Specifically, as a consequence of the oil spill, many residents in Baker Estates have been forced to relocate. Battle Creek Realty has been unable to market the vacant sites or to attract new tenants due to the ongoing cleanup efforts and the stigma associated with the spill.

18. Due to the oil spill, Defendants bought-out certain residents of Baker Estates, further impacting Battle Creek Realty's revenue.

19. Due to the oil spill, at least three dozen homes had to be vacated, and the removal costs of the houses are significant.

20. Because of the spill, the status of Baker Estates' drinking water remains in jeopardy, and the area's air quality was greatly affected.

21. Battle Creek Realty has suffered damages as a result of Defendants' oil spill.

22. Battle Creek Realty seeks damages as set forth below.

Count I – Nuisance

23. Battle Creek Realty incorporates the allegations in the preceding paragraphs as though fully set forth here.

24. Defendants owed a duty to proceed with all reasonable and necessary care to prevent the spill of oil from its pipeline.

25. Defendants failure to proceed with appropriate and timely care and failure to prevent the oil spill created a nuisance which endangered both people and property, and created a nuisance upon the land and environment.

26. As a direct and proximate result of Defendants' breach of their duties, Battle Creek Realty was harmed.

27. Battle Creek Realty seeks damages as set forth below.

Count II – Trespass

28. Battle Creek Realty incorporates the allegations in the preceding paragraphs as though fully set forth here.

29. Defendants trespassed against the lands of Battle Creek Realty by causing oil to spill into the Kalamazoo River and to contaminate the property of Battle Creek Realty.

30. As a direct and proximate result of Defendants' trespass, Battle Creek Realty was damaged.

31. Battle Creek Realty is entitled to recover from Defendants for their trespass.

32. Battle Creek Realty seeks damages as set forth below.

Count III – Negligence

33. Battle Creek Realty incorporates the allegations in the preceding paragraphs as though fully set forth here.

34. Defendants owed a duty to Battle Creek Realty to operate and maintain their pipeline with due care to prevent the oil spill.

35. Defendants breached this duty by operating and maintaining the pipeline in a manner allowing the pipeline to spill oil.

36. As a direct and proximate result of Defendants' breach of their duties, Battle Creek Realty was harmed.

37. Battle Creek Realty seeks damages as set forth below.

Count VI – Strict Liability

38. Battle Creek Realty incorporates the allegations in paragraphs 1-22 of this Complaint as though fully set forth here.

39. This Count for strict liability is plead in the alternative to Count III for negligence.

40. Defendants engaged in abnormally dangerous activities by the manner in which they maintained and operated the oil pipeline and in which they transported oil through the pipeline.

41. Defendants' activities resulted in the oil spill.

42. As a direct and proximate result of Defendants' conduct in engaging in the abnormally dangerous activities, substantial amounts of oil have been released. The harm suffered by Battle Creek Realty is exactly the kind of harm that makes Defendants' actions abnormally dangerous.

43. Battle Creek Realty seeks damages as set forth below.

Count V – Violation of the Michigan Natural Resources and Environmental Protection Act

44. Battle Creek Realty incorporates the allegations in the preceding paragraphs as though fully set forth here.

45. Defendants own and operate the pipeline and are responsible for the activity that caused the oil spill.

46. As a direct and proximate result of the oil spill, Battle Creek Realty has been harmed.

47. Under the Michigan Natural Resources and Environmental Protection Act, Battle Creek Realty is authorized to bring this action.

48. Battle Creek Realty seeks damages as set forth below.

DEMAND FOR RELIEF

WHEREFORE, Battle Creek Realty respectfully requests that this Court enter judgment against Defendants in whatever amount it is found to be entitled, plus interest, costs, reasonable attorneys' fees, and exemplary damages.

JURY DEMAND

Battle Creek Realty demands a jury for all issues so triable.

Respectfully submitted,

BOYLE BURDETT

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